MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. WILSON

[S.C. (Salleh Abas L.P., Hashim Yeop A. Sani & Wan Hamzah S.C. JJ.) October 28, 1987 and January 9, 1988]

[Kuala Lumpur – Supreme Court Criminal Reference No. 6 of 1987]

Criminal Law – Corruption – Knowingly using a time sheet record with false particulars with intent to deceive – Whether time sheet record a document – Time sheet record used as a basis for claim to monetary benefits – Prevention of Corruption Act 1961, s. 4(c).

Interpretation – Receipt, account or other document – Whether to be construed ejusdem generis – Time sheet record used as a basis for claim to monetary benefits – Prevention of Corruption Act 1961, s. 4(c).

In this case, the respondent had been charged under section 4(c) of the Prevention of Corruption Act 1961 and convicted and sentenced in the Sessions Court. The respondent appealed to the High Court which reversed the decision of the Sessions Court and acquitted and discharged the respondent. One of the points considered by the learned appellate judge was the question of the proper interpretation of the words "other document" appearing in section 4(c) of the Prevention of Corruption Act.

The allegation against the respondent was that he had prepared and knowingly used, with intent to deceive the Malayan Railway, a time sheet record of his working hours and allowances in respect of which the Malayan Railway was interested and which document contained statements which were false in material particulars in that the respondent claimed allowance for working in Kuala Lumpur during a certain period whereas in fact he was attending a military training course elsewhere during the same period for which he was already paid.

The Public Prosecutor referred to the Supreme Court the question whether the time sheet record used in the circumstances in the case is a "document" within the meaning assigned to it under section 4(c) of the Prevention of Corruption Act 1961.

Held: in the instant case, the facts clearly showed that the time sheet record was clearly used as a basis for the respondent's claim to monetary benefits to which he is not entitled and it was therefore a "document" within the meaning assigned to it under section 4(c) of the Prevention of Corruption Act 1961.

Cases referred to:

(1) *R.* v. *Brian Gordon Tweedie* (1984) 79 Cr. App. R. 168.
(2) *Sage* v. *Eicholz* [1919] 2 K.B. 171.
(3) *Nadimuthu* v. *Public Prosecutor* [1974] 1 M.L.J. 20.

A SUPREME COURT.

Mohd Noor bin Haji Abdullah (Deputy Public Prosecutor) (*Jalaldin bin Hussain*, Deputy Public Prosecutor, with him) for the appellant.

G. Sri Ram (*Miss S. Kanawagi* with him) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the judgment of the court): This was a reference by the Public Prosecutor under section 66(1) of the Courts of Judicature Act 1964 with the question as follows:

> "Whether a time sheet namely Kertas Waktu Kerja Kakitangan Gaji Bulan (Baharu) used in the circumstances described in the judgment in Wilayah Persekutuan Criminal Appeal No. 52-35-1986 is a 'document' within the meaning assigned to it under section 4(c) of the Prevention of Corruption Act 1961."

The respondent was originally charged under section 4(c) of the Prevention of Corruption Act 1961 and was convicted and fined $1,000, in default six months' imprisonment, by the Sessions Court. The respondent appealed to the High Court. On March 9, 1987, the learned appellate judge reversed the decision of the Sessions Court and acquitted and discharged the respondent. In the petition of appeal, there were not less than 19 grounds of appeal. One of the points considered by the learned appellate judge was the question of the proper interpretation of the words "other document" appearing in section 4(c) of the Prevention of Corruption Act 1961.

The facts relied on by the prosecution were that the respondent knowingly used, with intent to deceive Keretapi Tanah Melayu, a document known as the Kertas Waktu Kerja Kakitangan Gaji Bulan (exhibit P3) in respect of which Keretapi Tanah Melayu was interested and which document contained statements which were false in material particulars in that the respondent claimed allowance for working in Kuala Lumpur during a certain period whereas in actual fact he was attending a military training course elsewhere during the same period for which he was already paid. P3 was in fact the time sheet record of the working hours and allowance of a worker. This document was normally prepared by the salaries section of the Keretapi Tanah Melayu but in the instant case it was prepared by the respondent himself.

Section 4(c) of the Prevention of Corruption Act 1961 reads:

"If ... (c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both."

On the interpretation of the words "other document" in section 4(c), the learned appellate judge, following the reasoning of the Court of Appeal in *R.* v. *Brian Gordon Tweedie,*[1] ruled that exhibit P3 does not fall within the meaning of "other document" in section 4(c) of our Act. In *Tweedie,*[1] the accused was instructed by his employers to sell silver and palladium before the close of trading on a particular day because it was thought that the market would start falling. The accused failed to comply with the instruction but made three false entries in the trading sheet of the company purporting to show the sale of silver and palladium. He then handed the trading sheet to a member of the firm's accounting department. As a result, his employers lost £170,000. The accused was convicted for corruption under the 1906 Act but was acquitted on appeal. In the Court of Appeal, the words "or other document" (also appearing in the U.K. 1906 Act) were construed *ejusdem generis* and Lawton L.J. said:

"A receipt is made out to someone who has paid a debt. An account is rendered by one person to another. The words 'or other document' should, in our judgment, be construed as meaning a document which would pass *inter partes.*"

Indeed in *Tweedie,*[1] the document relied on by the prosecution was one to be used "for accounting purposes" only by the employers and never intended to be *inter partes* and had none of the characteristics of an *inter partes* document. We can therefore hardly argue against the decision in *Tweedie* based on the facts before the Court of Appeal. But a more pragmatic approach would appear to have been adopted in *Sage* v. *Eicholz*[2] which was a case stated by a metropolitan police magistrate to the King's Bench Division. There the respondent was originally charged under the U.K. Prevention of Corruption Act 1906. The facts of that case are as follows. It was the practice of the Metropolitan Water Board to allow to the owners of houses a deduction from the water rates in respect of such portions of their property which had been empty during the quarter for which the rates were payable. The respondent, who was the owner of a block of chambers, handed to an agent of the Board his claims for "empties" in which he fraudulently represented that portions of the block had been empty for a longer period than was in fact the case, thereby obtaining a larger allowance than he was entitled to. The provision of the 1906 Act under which the respondent was charged read as follows:

"If any person knowingly gives to any agent ... any ... document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence."

Bray J. said at p. 176:

"In my view the words of the Act are perfectly clear and unambiguous. The word 'knowingly' is deliberately used in the third paragraph instead of the word 'corruptly', and 'knowingly' does not necessarily involve any element of corruption. The substitution of the word 'knowingly' was probably made because of the great difficulty of proving corruption, and it was thought advisable in a case of the kind dealt with in that paragraph to make the act an offence whether it was done corruptly or not."

Lawrence J. said at p. 177:

"The word 'corruptly' is used in the first and second branches, and, as my Lord has pointed out, is deliberately omitted from the third. That omission is to my mind readily explained by the fact that it is frequently found impossible to prove that an agent has been corrupted; and in view of that difficulty it was thought sufficient, in order to establish an offence on the part of the giver, to prove that he knowingly gave to an agent a document which contained a statement that was false, erroneous, or defective, intending it to mislead the principal, to prove that the agent, knowing that the document was false, used it with intent to deceive his principal."

The same pragmatic approach was adopted by our Federal Court in *Nadimuthu* v. *Public Prosecutor*[3] which was also a reference on the question whether a medical certificate used in the circumstances of that case was a "document" within the meaning of section 4(c) of the Prevention of Corruption Act 1961. The appellant there was also an employee of the Keretapi Tanah Melayu and charged with knowingly using, with intent to deceive his principal, a sick certificate which contained statements false in material particulars which to his knowledge were intended to deceive his principal. The appellant was paid wages for the two days he was supposedly unfit for duty on the strength of those medical certificates. It was held by the Federal Court that the medical certificates were clearly used to claim monetary benefits to which the applicant was not entitled and therefore the medical certificates were "documents"

within the meaning of section 4(c) of the Prevention of Corruption Act 1961.

In the instant case, the facts clearly showed that the time sheet (exhibit P3) was clearly used as basis for the respondent's claim to monetary benefits to which he was not entitled. It cannot be correct to say that exhibit P3 is meant only for internal use of the department. On the facts, exhibit P3 is clearly distinguishable from the returns made in *Tweedie*.

We accordingly answered the question in the affirmative and made no other orders.

Solicitors: *Messrs. Sri Ram, Zulkifly & Kumar.*

LEE FATT SENG v. HARPER GILFILLAN (1980) SDN. BHD.

[S.C. (Seah, Hashim Yeop A. Sani & Wan Hamzah S.C. JJ.) September 23, 1986 and December 18, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 400 of 1985]

Labour Law – Termination benefits – Computation of – Whether rest days should be excluded in computation of average day's wages – Meaning of "Wages" – Employment (Termination and Lay Off Benefits) Regulations 1980, reg. 6 – Employment Act 1955, s.2(1).

In this case, the appellant had been retrenched by the respondent after working with the company for about 22½ years. He was paid termination benefits but he complained to the Labour Department that the computation of the termination benefits by the company was incorrect and the payment was short of the correct amount. The Assistant Commissioner of Labour held an inquiry at which it was argued on behalf of the appellant that rest days should be excluded from the twelve completed months' service in the computation of the average true day's wages on the ground that no work was done on rest days. If the total number of days was reduced by the exclusion of the rest days, the amount of average true day's wage would be greater than if the rest days were included in the total number of days in the twelve completed months. The Assistant Commissioner of Labour agreed to the appellant's contention and, accordingly, the award of termination benefits which he made was greater than the amount calculated and paid by the respondent. The respondent appealed to the High Court which disagreed with the Assistant Commissioner of Labour and held that the rest days should be excluded. The appellant appealed.

Held by a majority (Hashim Yeop A. Sani dissenting): (1) the average daily wages in a particular month should be arrived at by dividing the amount of the monthly wages by the total number of days in the month. This method seems to be consistent with the term "average true day's wages" contained in regulation 6(2) of the Employment (Termination and Lay-off Benefits) Regulations 1980. It is not correct to say that "wages" are only in respect of days on which work is actually done;

2) the decision of the High Court is correct and the appeal should be dismissed.

Cases referred to:

(1) *Bird* v. *British Celanese Ltd* [1945] 1 All E.R. 488.

(2) *Union Carbide Singapore Private Ltd.* v. *M.P. Gindon Nair* (unreported) (District Appeal No. 20 of 1972).

(3) *Keast* v. *The Barrow Hematite Steel Company* (1899) 15 T.L.R. 141.

SUPREME COURT.

Gurdial Singh Nijar (*Mohideen Abdul Kader* and *Miss Meenakshi Raman* with him) for the appellant.

C.V. Das for the respondent.

Seah S.C.J.: I have read the judgments prepared by my learned brothers, Hashim Yeop A. Sani S.C.J. and Wan Hamzah S.C.J. I agree that the appeal should be dismissed for the reasons stated in the judgment of Wan Hamzah S.C.J.

Hashim Yeop A. Sani S.C.J. (dissenting): The appellant was dissatisfied with the computation in order to arrive at termination benefits due to him under the Employment (Termination and Lay-Off Benefits) Regulations 1980 (the Regulations) when he was retrenched after 22½ years service with the respondent company. The appellant contended that rest days (Saturdays and Sundays) should be excluded from the computation in order to arrive at his average true day's wages under regulation 6(2). The respondent company, on the other hand, argued that rest days should be included.

What the appellant is entitled to under the regulations is termination benefits which shall not be less than 20 days' wages for every year of employment (regulation 6(1)(c)) and the amount to be computed is that which is to give him his "average true day's wages" for every 12 completed months of services (regulation 6(2)). It is clear from the language of the Regulations that for the purpose of giving termination benefits under regulation 6(1) and (2), we cannot but must first ascertain what is the true day's wages.

The appellant's complaint was that the computation of the termination benefits that was given to him should have excluded rest days to arrive at